



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

SMC
Docket No: 07274-00
7 December 2000

SSGT [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 23 October 2000, a copy of which is attached, and your letter dated 15 November 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board noted that regardless of whether you were charged under the Uniform Code of Military Justice for any of the matters mentioned in the fitness report at issue, the fact is the report does not reflect you were the subject of any charges. They were unable to find you submitted a rebuttal statement to the report as you assert, noting that you provided no copy, and that the third sighting officer says "As of this date, SNM [subject named Marine] has failed to provide a written statement which he had indicated was his intention."

If you can produce a copy of your rebuttal, you may submit it to HQMC (MMSB-30) with a request that it be filed in your record with the fitness report at issue. They may solicit further comments from the reviewing officer and third sighting officer.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

0-2



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
23 OCT 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 20 Jun 00
(b) MCO P1610.7D

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 October 2000 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 950301 to 951108 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report represents "double jeopardy" for charges in a case that was ultimately dismissed and that surfacing such information is legally objectionable. To support his appeal, the petitioner furnishes a copy of DD Form 458 (Charge Sheet) of 19 September 1995.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board emphasizes that when the petitioner had an opportunity to surface his disagreements via an official statement of rebuttal, he took no action in that regard. It is clear from his signature in Item 24 that he intended to avail himself of that right; however, as of the time the report was third-sighted on 28 August 1996, he had failed to submit a written statement. Simply stated, it was at that time that the petitioner should have surfaced the issues which he now raises in reference (a). To do so some four years after the fact lacks both timeliness and credibility.

b. A violation of reference (b) did not occur as the petitioner alleges; nor does the "double jeopardy" claim apply in this case. Contrary to what the petitioner may believe, the charges specified in the enclosure to reference (a) are not addressed in the fitness report. The Reporting Senior cites mismanagement of personal and financial affairs, poor judgment, and substandard performance of regular duties as the basis for the

(3) PERB

7274-0

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adverse report. While the specified charges were not executed, that does not, by default, nullify the report. Lacking anything to the contrary, it would appear that the report merely contains statements that are uncontroverted matter of fact.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps